UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/88/D/1424/2005
20 November 2006

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE
Eighty-eighth session
16 October-3 November 2006

DECISION

Communication No. 1424/2005

Submitted by:	Armand Anton (represented by counsel, Alan Garay)
Alleged victim:	The author
State party:	Algeria
Date of communication:	24 November 2004 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 August 2005 (not issued in document form)
Date of adoption of decision:	1 November 2006
Subject matter:	Dispossession of property following the declaration of independence of the State party
Procedural issues:	Inadmissibility *ratione temporis*, inadmissibility *ratione materiae*

* Made public by decision of the Human Rights Committee.

GE.06-45991 (E) 220107 260107

Substantive issues:	Right of peoples to dispose freely of their natural wealth and resources; freedom to choose one's residence; arbitrary or illegal interference, together with slander and prejudice to reputation; violation of minority rights; discrimination with respect to dispossession and property rights
Articles of the Covenant:	1, 12, 17 and 27; 2, paragraph 1, and 26, separately or in combination; 26 and 17 in combination; and 5
Articles of the Optional Protocol:	1 and 3

[ANNEX]

Annex

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Eighty-eighth session

concerning

Communication No. 1424/2005*

Submitted by:	Armand Anton (represented by counsel, Alan Garay)
Alleged victim:	The author
State party:	Algeria
Date of communication:	24 November 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 2006,

Adopts the following:

---

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

In accordance with rule 90 of the Committee's rules of procedure, Ms. Christine Chanet did not take part in the adoption of this decision.

The text of two individual opinions signed by Committee members Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Nisuke Ando and Ms. Ruth Wedgwood, are appended to the present document.

Decision on admissibility

1. The author of the communication, dated 24 November 2004 and supplemented by the comments submitted on 10 January 2005 and 1 September 2005, is Armand Anton.[1] Mr. Anton is a French citizen born at Oran in Algeria on 18 November 1909. He claims to have been the victim of violations by Algeria of articles 1, 12, 17 and 27; article 2, paragraph 1, and article 26, separately or in combination; articles 26 and 17 in combination; and article 5 of the International Covenant on Civil and Political Rights. He is represented by counsel, Alain Garay. The Covenant and the Optional Protocol thereto entered into force for the State party on 12 December 1989. The Special Rapporteur on New Communications and Interim Measures of the Committee decided that the question of admissibility of the communication should be considered separately from the merits.

Factual background

2.1 Armand Anton was born and lived in Algeria as a French citizen. There, he set up the companies "Établissements Bastos-Anton" and "Établissements Armand Anton", dealing in spare parts and accessories for cars and tractors, industrial supplies, equipment for cellars and rubber products. In 1956, he became a real estate agent and set up a non-trading company with the intention of building and putting up for sale two apartment blocks in Oran. The company subsequently purchased several lots in Oran. On 14 July 1962, following the declaration of Algerian independence on 3 July 1962, the author left Algeria for France.

2.2 France adopted legislation providing for compensation for dispossessed French property owners who left the State party following the signing of the "Evian agreements"[2] by three French ministers and the Algerian representatives on 18 March 1962. Being eligible under the act of 26 December 1961 on the reception and resettlement of French nationals from overseas,[3] he filed a petition for the protection of his property in Algeria with the agency responsible for protecting the property and interests of repatriated citizens[4] on 21 December 1962. On the basis

---

[1] Armand Anton died on 12 August 2005. His wife Alice and his children Jacqueline and Martine are maintaining the communication before the Committee as his successors.

[2] See the section entitled "Provisions concerning French citizens of ordinary civil status": "[…] Their property rights will be respected. No measures of dispossession will be taken against them without their being granted fair compensation previously established. They will receive guarantees appropriate to their cultural, linguistic and religious characteristics. […] A Court of Guarantees, an institution of domestic Algerian law, will be responsible for ensuring that these rights are respected."

[3] Act No. 61-1439 of 26 December 1961 on the reception and resettlement of French nationals from overseas.

[4] Counsel provided copies of letters from 1962 and 1965. The author also wrote to the French Prime Minister on 28 December 1966.

of the ordinance of 12 September 1962,[5] he filed two powers of attorney with the French authorities authorizing the agency to implement any protective measures that might be required. The first, filed on 4 March 1965 under number 159,232, concerned all the business and office equipment belonging to him. The second, filed on 3 June 1965 under number 172,273/IM, concerned 12 apartments and 10 business premises. Counsel submits that the French authorities ultimately took no protective measures to safeguard the author's property rights.

2.3 The author was also eligible under the Act of 15 July 1970[6] introducing a national contribution towards compensation of dispossessed French property owners. The National Agency for Compensation of French Overseas Nationals (ANIFOM), a French government institution, assigned the author a case number - 34F008811 - relating to the property he owned in Algeria. By decision No. 148,099 of 17 June 1977, ANIFOM authorized an advance compensation payment that was considerably lower than the actual value of the property. These measures were taken by France under articles 2[7] and 12[8] of Act No. 70-632 of 15 July 1970. Under the acts of 2 January 1978[9] and 16 July 1987,[10] the author subsequently received additional compensation.

2.4 The intervention by France did not result in the author obtaining fair compensation corresponding to the 1962 value of the confiscated property, even though the State party has been sovereign and independent since 1962. The author recounts the history of the State party's

---

[5] Ordinance No. 62-1106 of 19 September 1962 establishing an agency responsible for protecting the property and interests of repatriated citizens.

[6] Act No. 70-632. The compensation was to serve as "an advance on claims against foreign States or beneficiaries of the dispossession" (art. 1), in relation to the expropriation of real property ordered in Algeria prior to 3 July 1962 (art. 12). Also see Decree No. 70-1010 of 30 October 1970.

[7] "Natural persons fulfilling the following conditions are eligible for compensation: (1) they were dispossessed, before 1 June 1970 and as a result of political events, of property mentioned in title II of the present Act and located in a territory previously under the sovereignty, protectorate or trusteeship of France … ."

[8] "The dispossession mentioned in article 2 must be a consequence of nationalization, confiscation or a similar measure taken in application of a law or regulation or administrative decision, or of measures or circumstances that resulted, de facto or de jure, in the loss of possession and use of the property. The expropriation of real property ordered in Algeria prior to 3 July 1962 … falls within the meaning of dispossession as described above, if no compensation was awarded."

[9] Act No. 78-1 of 2 January 1978 on compensation of French nationals repatriated from overseas dispossessed of their property.

[10] Act No. 87-549 of 16 July 1987, which aimed at a final settlement of all cases of lost or "confiscated" overseas property.

independence and notes that, after the signing of the Evian agreements on 18 March 1962, the State party was unable or unwilling to assume its responsibilities, which include ensuring the safety and protecting the moral and material interests of Algeria's resident populations. In particular, the Evian agreements and the guarantees contained therein were not honoured, although the head of the Algerian delegation had stated that "the Algerian delegation, mandated by the National Council of the Algerian Revolution and on behalf of the Algerian Government, declares its commitment to respect these political and military agreements and to ensure their implementation". Counsel for the author refers, inter alia, to the text of the 1 July 1962 referendum and a work dated 1964[11] (*Consultation*), concluding that, as a result of the referendum, the Evian declarations assumed the status of a treaty under international law.

2.5 With regard to the measures taken by the State party concerning the property of persons who had left its territory, counsel distinguishes several periods, based on the analysis contained in *Consultation*. During the first period, from July to September 1962, the dispossessions had no legal basis. They were isolated acts of individuals, groups of individuals, or even local authorities without a mandate, which elicited no clear response from the State party. Later, the ordinance of 24 August 1962[12] governed the fate of vacant properties (not used, occupied or enjoyed by their legal owner for at least two months), placing them under prefectural administration. The ordinance was intended to protect the properties and preserve the owners' rights. In most cases, what it did was to provide a legal justification for the current state of affairs and perpetuate it, thus encouraging further dispossessions, with decisions being left to the discretion of prefects without any safeguards or prior formalities and without any effective avenue of redress. However, according to *Consultation* some restitutions were ordered and actually carried out. The decree of 23 October 1962[13] prohibited and annulled all contracts for the sale of vacant property, including sale and rental agreements concluded abroad after 1 July 1962. The properties affected by such annulments were reclassified as vacant within the meaning of the ordinance of 24 August 1962. The decree of 18 March 1963[14] established

---

[11] *Consultation sur les droits des français atteints en Algérie par des mesures de dépossession*, G. Vedel, R.W. Thorp, Ch. De Chaisemartin, P. Lacombe, and A. Ghanassia (1 December 1964).

[12] Ordinance No. 62-020 of 24 August 1962 concerning the protection and administration of vacant property.

[13] Decree No. 62-03 of 23 October 1962 regulating the transaction, sale, rental, concession, lease or sublease of movable or immovable property. Agencies were established to collect rent. *Consultation* indicates that, in response to the owners' protests, certain claims were taken to court, the property was declared vacant or requisitioned. It further states that "apparently instructions were given to allow owners residing outside Algeria to appoint representatives to collect their rent and manage the apartment blocks, but they were never implemented".

[14] Decree No. 63-88 of 18 March 1963 governing vacant properties.

conditions and safeguards for declaring property vacant and provided a legal remedy.[15] Those remedies were ineffective, however, since the judges who heard the cases took a long time to deliver their decisions, and new provisions virtually removed all judicial guarantees. In fact, the decree of 9 May 1963[16] excluded any possibility of appeal, except through a departmental commission[17] and added to the notion of vacancy the broad notion of public order and social peace, giving the authorities near sovereign powers of discretion. From a procedural point of view, the presiding judges of courts seized of interim relief applications filed under the 18 March 1963 decree declared themselves not competent, since property management now fell under new legislation that did not provide for applying to an interim relief judge. The discretionary appeal commissions provided for in the decree were never set up.

2.6 The author cites *Consultation*, according to which, in the absence of time limits on the measures prescribed by these provisions, what was happening was a form of disguised expropriation, even if in strictly legal terms the titular owners did not lose their property rights. *Consultation* also states that the legislation concerning the nationalization of farms (decree of 1 October 1963)[18] was silent on the issue of compensation and that all property belonging to foreigners was transferred to the State,[19] contrary to what was stipulated in the Evian agreements, which prohibited any discrimination and stipulated that fair compensation must be awarded prior to any expropriation. Lastly, counsel submits that Opinion No. 16 Z.F. on the transfer of the proceeds of harvests on properties previously owned by French farmers and nationalized by the decree of 1 October 1963[20] was the only compensation officially granted to French nationals who had lost their property. The Opinion provided for the payment

---

[15] Within two months, before the competent interim relief judge of the prefecture in question. According to *Consultation*, "this was a fast, inexpensive procedure that could constitute […] an effective means of enforcing the recognition of and respect for their rights. But, again, the implementation of the decree fell short of the expectations raised by its content".

[16] Decree No. 63-168 of 9 May 1963 concerning the placement under State protection of movable and immovable property whose acquisition, management, development or use might undermine public order or social peace provided that prefectural decisions placing the property under State protection could only be appealed within one month, before a departmental commission. All previous provisions not in conformity with the decree were repealed.

[17] Established by Decree No. 63-222 of 28 June 1963 regulating appeal against prefectural decisions placing certain properties under State protection. Appeals could be filed with the prefect, who would transmit the application to a departmental and, subsequently, to a national commission set up within the Ministry of the Interior.

[18] Decree No. 63-388 of 1 October 1963 declaring farms belonging to certain natural or legal persons State property.

[19] While there was no transfer of vacant property. According to *Consultation*, six economic sectors were in effect nationalized.

[20] Opinion published in the *Official Journal* of the Algerian Republic for 17 March 1964.

of 10 million old francs as social compensation to be distributed among market gardeners and growers. However, negotiations concerning vacant property were unsuccessful.[21] On 21 December 1962, the author contacted the Directorate of the Centre for Counselling and Rehabilitation of Repatriated Persons in Algiers to obtain information on the steps to be taken to protect his property.

The complaint

3.1 The author complained of violations of six different kinds: (a) deprivation of property and means of subsistence of the French minority through expropriation (article 1 of the Covenant); (b) loss of the right to choose one's residence freely in Algeria (art. 12); (c) unlawful interference with the applicants' home in Algeria, together with attacks on their honour and reputation (art. 17); (d) violation of the applicants' rights as members of a minority group with a distinct culture (art. 27); (e) discriminatory measures constituting a violation of rights involving differential and unjustified treatment by the State with respect to dispossession of property (articles 2, paragraph 1, and 26 separately or in combination and articles 17 and 26 in combination); and (f) discrimination in respect of the author's property rights (art. 5). The author considers that rights of individuals acquired under the predecessor State must be safeguarded by the successor State, that that principle is part of general international law[22] and that the failure to recognize the principle of acquired rights entails the international responsibility of States.[23] In practice, the State party should have upheld and protected the property rights of French nationals repatriated from Algeria, which was not the case.

3.2 In respect of the exhaustion of domestic remedies, the author is of the view that these avenues of recourse have no prospect of success. First, the failure to set up the Court of Guarantees provided for in the Evian agreements has resulted in a procedural deadlock, where it should have ordered investigations, annulled laws incompatible with the Declaration of Guarantees and ruled on all compensation measures. Second, under the regulations authorizing dispossession, certain avenues of redress were opened, but other decrees closed them (see above, paragraph 2.5). The author refers to a note by the Secretary-General of the Government of the State party dated 11 March 1964 stating that in adopting the decree of 9 May 1963, "the Government was motivated by the desire to prevent further submission of cases to the courts",

[21] Decree No. 63-64 of 18 February 1963 fixing compensation for the occupation of residential business premises considered vacant explicitly provided that the owners of vacant property would receive no compensation and deferred consideration of their rights to later provisions.

[22] Counsel cites the Permanent Court of International Justice cases *German Settlers in Poland,* Advisory Opinion of 10 September 1923, *P.C.I.J., Series B, No. 6,* pp. 15 and 36; *Certain German Interests in Polish Upper Silesia*, Judgment of 25 May 1926, *P.C.I.J., Series A, No. 7,* pp. 20-21.

[23] Counsel cites the Permanent Court's Judgment of 26 July 1927 in the *Factory at Chorzów* case, *P.C.I.J., Series A, No. 9,* pp. 27-28.

and points out that the departmental commissions therefore limited themselves to hearing the case and issuing an opinion, leaving the final decision to the national commission chaired by the Minister of the Interior. However, this commission was never set up. He also considers that, while avenues of redress do exist (administrative tribunals in the case of farms, for example), their chance of being successful on the merits is negligible.

3.3 *Consultation* indicates that the following remedies were available to the injured owners in theory. First, they could file in the Supreme Court:[24] (1) annulment proceedings in respect of the decrees introducing the vacant property regime, the decree of 9 May 1963 and that of 1 October 1963; (2) an appeal against the decisions of the national commission ruling on appeals against measures enforcing the decree of 9 May 1963; (3) an appeal against prefectural decisions taken in application of the decree of 1 October 1963; (4) an appeal against decisions declaring property vacant; (5) an application for judicial review of appeals court judgements rendered under the procedure established by article 7 of the decree of 18 March 1963; or (6) an application for judicial review when the seizure of property is the result of an administrative act. Second, it was possible to appeal to an interim relief judge against possible future decisions declaring property vacant. Lastly, an administrative appeal could be filed with the commissions established by the decree of 9 May 1963 against decisions placing property under State protection or declaring property vacant. Three proceedings were instituted before the president of the Court of Major Jurisdiction of Algiers by virtue of the decree of 18 March 1963[25] and were successful in that the Court either declared the decisions null and void or ordered surveys that found the property not to be vacant. Encouraged by these three orders, many other proceedings were instituted, but the favourable judgements could not be implemented. The appeals filed by virtue of the decree of 9 May 1963 never led to a result, because the commissions were never set up. Two decisions were rendered in May 1964 setting aside the order of the president of the Court of Algiers and affirming that the interim relief judge remained competent to hear disputes under the 18 March 1963 decree. Two appeals were also filed with the Court of Constantine, but decisions have not yet been rendered.

3.4 Thus, according to *Consultation*, all possible proceedings were instituted. Either the Algerian courts declared themselves not competent (lack of remedy owing to refusal to render judgement); or they referred the case to the administrative commission provided for by the decree of 9 May 1963, which was never set up (again, lack of remedy owing to refusal to render judgement); or they granted the appeal, but the decision was not enforced (lack of remedy owing to failure to execute). As for appeals to the Supreme Court, *Consultation* concludes that, while possible, in practice applications for judicial review of administrative decisions stand little

[24] Established by Act No. 63-218 of 18 June 1963.

[25] However, the decrees nationalizing agricultural property, tobacco plantations, flour mills, semolina factories, transport firms, cinemas, etc., did not provide for any amicable settlement procedure or litigation. Only administrative appeals were possible.

chance of success.[26] Counsel submits that, since no French citizen exiled from Algeria has obtained satisfaction for the dispossession suffered, the burden of proof is on the State party.[27] The author has demonstrated that domestic remedies have no prospects of success.[28]

3.5 In view of the impossibility of obtaining justice in the State party, a number of French citizens exiled from Algeria turned to France. The Council of State rejected 74 appeals on 25 November 1988, 17 February 1999 and 7 April 1999 (cases *Teytaud and others*).[29] They subsequently turned to the European Court of Human Rights,[30] which found that "the applicants were dispossessed of their property by the Algerian State, which is not a party to the Convention".

3.6 With regard to the admissibility of the communication, the author argues that it was submitted by an individual who, when violation of the Covenant first occurred, was subject to the State party's jurisdiction;[31] that he is personally the victim of violations that have continued since 1962; and that the matter has not been submitted to another procedure of international investigation or settlement. With regard to the Committee's jurisdiction *ratione temporis*, counsel considers that the effects of the alleged violations of the rights enshrined in the Covenant are continuing and lasting. While the Committee in principle has no jurisdiction *ratione temporis* over acts of a State party prior to its ratification of the Optional Protocol, the Committee becomes competent if the acts in question continue to have effects after the entry

---

[26] It mentions a range of legal arguments that could have been used.

[27] He cites communication No. 4/1977, *William Torres Ramirez v. Uruguay*, Views adopted on 23 July 1980, para. 9.

[28] He cites communication No. 84/1981, *Hugo Gilmet Dermit v. Uruguay*, Views adopted on 21 October 1982, para. 9.4; and communications Nos. 221/1987 and 323/1988, *Cadoret and Le Bihan v. France*, Views adopted on 11 April 1991, para. 5.1.

[29] With regard to an appeal filed against the decisions rendered on 11 July 1996 by the Administrative Appeal Court of Paris, the Council of State ruled on 17 February 1999 that the French State was not responsible, since the Evian agreements "included no clauses or promises guaranteeing French citizens residing in Algeria that in case they were deprived of their property by the Algerian State, the French Government would compensate them for their loss".

[30] See applications Nos. 48754/99 and 49721/99; Nos. 49720/99 and 49723/99; Nos. 49724-25/99 and 49729/99; 49726/99 and 49728/99; 49727/99 and 49730/99, *Teytaud and others v. France*, inadmissibility decision of 25 January 2001; and applications Nos. 52240/99 to 52296/99, *Amsellem and others v. France*, inadmissibility decision of 10 July 2001.

[31] He cites communication No. 409/1990, *E.M.E.H. v. France*, Views adopted on 2 November 1990, para. 3.2; and communication No. 74/1980, *Miguel Angel Estrella v. Uruguay*, Views adopted on 29 March 1983.

into force of the Optional Protocol and continue to violate the Covenant or have effects which in themselves constitute a violation of the Covenant.[32] This view has also been upheld by the International Law Commission.[33]

3.7 With regard to the fact that the author had to wait until 2004 to submit his case to the Committee, counsel notes that article 3 of the Optional Protocol declares inadmissible "any communication … which it considers to be an abuse of the right of submission of such communications". According to counsel, since the Covenant and the Optional Protocol set no time limits on submission, and that, in keeping with Committee jurisprudence,[34] the author provides explanations to justify the delay, the submission of the communications in 2004 in no way constitutes an abuse of the right of submission. In the first place, the appeals submitted to domestic courts in Algeria since 1962 have been unsuccessful. Second, Algeria only ratified the Covenant and its Optional Protocol in 1989. Third, as a result, the author and the French citizens exiled from Algeria, as French nationals and for reasons of nationality and culture, naturally turned to their national authorities in France, rather than addressing a foreign State. Fourth, the recourse to French and European proceedings (from 1970 to 2001) explains the time elapsed between 1962 and 2004. Fifth, in August 2001 the French citizens exiled from Algeria were informed that all remedies had been exhausted,[35] which explains the delay between September 2001 and January 2004, when counsel was asked to look into the case and submit it to the Committee. Sixth, on 5 December 2002 the French President proclaimed the adoption of a

---

[32] Citing communication No. 24/1977, *Sandra Lovelace v. Canada*, Views adopted on 30 July 1981, para. 7.3; communication No. 28/1978, *Weinberger Weisz v. Uruguay*, Views adopted on 29 October 1980, para. 6; communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 7; communication No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983; communication No. 196/1985, *Gueye v. France*, Views adopted on 3 April 1989, para. 5.3; and communication No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996.

[33] Article 25.

[34] He refers to communication No. 787/1997, *Gobin v. Mauritius*, decision on admissibility adopted on 16 July 2001, relating to a five-year delay (the facts dating from 1991 and the communication being submitted in 1996), in which the Committee ruled that "there are no fixed time limits for submission of communications under the Optional Protocol and that the mere delay in submission does not in itself constitute an abuse of the right of communication. However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay. In the absence of such explanation, the Committee is of the opinion that submitting the communication after such a time lapse should be regarded as an abuse of the right of submission, which renders the communication inadmissible".

[35] He provides a letter of 20 August 2001 from the former counsel addressed to Mr. Esclapez informing him of the decision of the European Court of Human Rights not to admit the claims in the case of *Amsellem and others v. France*, which was subsequently transmitted to the 57 applicants on 27 August 2001, and which expresses the view that "these decisions put a definite end to all the proceedings instituted".

fourth piece of legislation providing for national contributions in favour of the repatriated French, which raised hopes for a definitive and comprehensive solution. However, bill No. 1499 of 10 March 2004 did not include a reparation mechanism to ensure compensation for confiscated property. Lastly, counsel refers to the Committee's jurisprudence concerning statutes of limitations in respect of contentious cases: "Further, with regard to time limits, whereas a statute of limitations may be objective and even reasonable *in abstracto*, the Committee cannot accept such a deadline for submitting restitution claims in the case of the authors, since under the explicit terms of the law they were excluded from the restitution scheme from the outset."[36] For the Committee, the impossibility of exercising remedy is sufficient to declare the proceedings admissible from the standpoint of time.

3.8 With respect to the alleged violation of article 1, paragraph 2, of the Covenant, the author claims to be an individual victim of a series of serious infringements of the exercise of a collective right: the right of French citizens exiled from Algeria. It is only because of his belonging to this community that he suffered serious infringement of his individual exercise of collective rights, in particular the inability to dispose freely of his natural wealth and resources, including the right to own property and the right to work.

3.9 With regard to the alleged violation of article 12, counsel considers that the conditions of the flight from Algeria are comparable to exile.[37] As a result of Algerian legislation on vacant property and confiscations, the author was unable to take up residence in Algeria or remain there. He was unable to choose his residence freely and yet was never officially notified of any restrictions of the kind provided for in article 12, paragraph 3. The author's deprivation of the freedom to choose his residence was incompatible with the rights enshrined in the Covenant.

3.10 With regard to the allegation of violation of article 17, the author submits that the dispossession measures never took legal form.[38] The regime instituted by the Algerian State derogated from the principle of lawfulness within the meaning of article 17. The interference with the privacy, family and home of the author had no basis in Algerian law. The State had no legal authority to proceed as it did purely through administrative regulations, and did not provide any legal protection that would have prevented his flight, emigration and exile.[39]

---

[36] Communication No. 857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, para. 5.9.

[37] He refers to the first draft of article 12, which contained the expression "No one shall be subjected to arbitrary exile". *Official Records of the General Assembly, tenth session* (1955), annexes, document A/2929, p. 38, para. 50.

[38] See general comment No. 16, paras. 2 and 3.

[39] See communication No. 760/1997, *Rehoboth Baster Community v. Namibia*, Views adopted on 25 July 2000.

3.11 On the allegation of violation of article 27, the author identifies himself as a member of a minority whose right to enjoy his own culture, in community with the other members of his group, was destroyed in 1962. General comment No. 23[40] states that "culture manifests itself in many forms, including a particular way of life associated with the use of land resources" (para. 7) and that "protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole" (para. 9). The question of the legal treatment of the members of the French minority in Algeria before and after 19 March 1962 has never been resolved in practice regarding the exercise of their cultural rights. The author has been deprived of his rights as a result of the lack of effective guarantees for the French minority; having been forced into exile, his right to access his native culture and language in Algeria has been interfered with, within the meaning of *Lovelace*.[41]

3.12 On the allegation of violation of articles 2, paragraph 1, and 26, separately or in combination, and of articles 26 and 17 in combination, counsel recalls that the Committee has established a direct correlation between articles 26 and 2. The exercise of rights recognized in the Covenant should be protected from discrimination, in other words, without distinction on the basis of different status or situation. Protection under article 26 is autonomous in nature, and "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant".[42] The author is a victim in this particular case of the continuing confiscation of his property, based on discriminatory legislation that has impeded the exercise of his property rights without any objective, reasonable justification. The Committee has stated that "confiscation of private property or the failure by a State party to pay compensation for such confiscation could still entail a breach of the Covenant if the relevant act or omission was based on discriminatory grounds in violation of article 26 of the Covenant".[43] The Algerian act of 26 July 1963[44] concerning confiscated property established the general principle of selectively and discriminatorily declaring property that had belonged to the "agents of colonization" to be

---

[40] General comment No. 23, 8 April 1994.

[41] Communication No. 24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981, para. 15.

[42] See general comment No. 18, para. 13.

[43] Communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, para. 11.3.

[44] Act No. 63-276 of 26 July 1963 concerning property confiscated and retention by the colonial administration.

State property. Under certain conditions, nationalized property was then returned, solely to the benefit of "individuals of Algerian nationality"[45] whose land had been nationalized, contrary to the guarantees under the Covenant and the Committee's jurisprudence.[46]

3.13 Moreover, the compensation mechanism of 17 March 1964[47] exclusively benefits one particular population group (farmers), thus constituting discrimination of which the author is a victim. The mechanism established an arbitrary distinction in treatment that benefited farmers alone with no justification: the obligation to compensate without discrimination is the corollary of the right to nationalize.[48] The Committee has on other occasions decided that "the confiscations themselves are not here at issue, but rather the denial of a remedy to the authors, whereas other claimants have recovered their properties or received compensation therefor",[49] and that "legislation must not discriminate among the victims of the prior confiscations, since all victims are entitled to redress without arbitrary distinctions".[50] There was therefore a violation of articles 2, paragraph 1, and 26 of the Covenant, separately or in combination, and of articles 26 and 17 in combination.

3.14 The claimed violation of article 5 of the Covenant stems from the destruction of the author's rights and freedoms in 1962. According to counsel, the scope of article 5, paragraph 2, also enables him to raise the question of implementation of article 17 of the Universal Declaration of Human Rights. Taking into account the above-mentioned claimed violations, article 5 was also violated.

---

[45] Article 3, Ordinance No. 95-26 of 30 Rabi' al-thani 1416, corresponding to 25 September 1995, amending and supplementing Act No. 90-25 of 18 November 1990 concerning land planning, with reference to Act No. 62-20 of 24 August 1962.

[46] Communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995; communication No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996.

[47] Opinion No. 16 Z.F., published 17 March 1964, solely concerned French farmers whose property had been nationalized, and authorized them to transfer "the proceeds from their wine and cereal harvests after deducting operating costs".

[48] General Assembly resolution 1803 (XVII) of 14 December 1962, entitled "Declaration on permanent sovereignty over natural resources", para. 4: "the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law". Counsel also refers to article 2 of the Charter of Economic Rights and Duties of States adopted on 12 December 1974 (General Assembly resolution 3281 (XXIX)).

[49] Communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, para. 11.4.

[50] Para. 11.6. See also communication No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996; and communication No. 857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, para. 5.8.

3.15 As for the mental pain and anguish suffered by the author, counsel maintains that the author's relocation entailed very serious moral damage based on continuing mental suffering and emotional anguish, together constituting a "confiscation" trauma. This calls for an official recognition by the State party of its responsibility in violating the author's fundamental rights. Counsel expressly requests the Committee to note that the State party, which is in breach of its obligations under the Covenant and under its domestic legislation, is obliged to remedy this series of violations. In the author's opinion, satisfaction in this case would constitute an appropriate way of compensating the moral damage. There would be a degree of satisfaction in achieving recognition of the fact that there are good grounds for the communication. He does not, however, lose sight of the need for reparation in the form of just and equitable financial compensation[51] for his confiscated property in Algeria.

State party's observations

4. In its observations of 17 October 2005, the State party argues that the communication should be declared inadmissible. The facts cited relate to a specific period in Algerian history and pre-date the adoption of the Covenant (December 1966) and its entry into force (March 1976). Furthermore, the State party became a party to the Covenant only when it ratified it on 12 December 1989. Moreover, according to the rules of procedure, referral to the Committee is only permissible once domestic remedies have been exhausted. This appears not to have been the case for the author who, as a French national, should first address the competent authorities in his own country.

Additional comments by the parties

5.1 In a letter dated 10 January 2006, counsel refers to his previous explanations for the delay in submission of the communication. Owing to the institution of compensatory measures in France, the author believed that the State party was not legally liable for the confiscation. The principle according to which certain factual situations suspend limitation for an action for compensation is recognized in international law. As for the State party's argument regarding the "specific period in Algerian history", counsel fails to understand how this reference to history demonstrates the inadmissibility of the communication and asks the State party to explain its remark so that he can respond. The State party does not challenge his repeated affirmation of the continuing effect of the claimed violations[52] after the entry into force of the Covenant owing to the fact that the State party, contrary to the Evian agreements and domestic law, has not established the Court of Guarantees.

---

[51] See communication No. 747/1997, *Des Fours v. Czech Republic*, Views adopted on 30 October 2001, para. 9.2.

[52] Referring to communication No. 196/1985, *Gueye v. France*, Views adopted on 3 April 1989; communication No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996 (para. 6.3); and communication No. 6/1977, *Sequeira v. Uruguay*, Views adopted on 29 July 1980.

5.2 Regarding exhaustion of domestic remedies, the author reiterates that adequate and effective domestic remedies have never been available to him in Algeria. He recalls the position of the Algerian authorities - which is well-known and has been vehemently asserted since the dispossession - which is either to eliminate the legal remedies or not to see them through so that the violations come to an end. The author is not obliged to pursue remedies, given that no French person from Algeria has obtained satisfaction for dispossession.[53] In its reply, the State party provides no solution or conclusion to the technical and legal questions raised by the author. As for the State party's argument that the author should seek redress in his own country (France) regarding a dispute over Algerian Government measures, counsel questions why the author should be obliged to involve France. Counsel refers to his exchange of correspondence with various French authorities in 2005, indicating that the highest French public authorities have barred proceedings. The author explicitly requests that the State party indicate the avenues of recourse available to him in Algeria so that he can satisfy the alleged obligation to have exhausted them.

6.1 In its observations of 3 April 2006, the State party maintains that the communication constitutes a serious violation of international law in that it calls into question the principle of decolonization. The communication is motivated by the definitive loss of the author's residence and property in Algeria, which were guaranteed and protected by the provisions of the Covenant. While the author maintains that domestic remedies have no prospect of success and are therefore unavailable, the Covenant did not enter into force until 23 March 1976 and was not ratified by the State party until 12 December 1989, which was 27 years after the French had voluntarily left Algeria. The Committee cannot therefore admit a retroactive application, since the events on which this communication is based took place in July 1962. The non-retroactivity principle is generally applicable to all international legal instruments, which can only be implemented with respect to events that took place after their entry into force. Moreover, article 28 of the 1969 Vienna Convention on the Law of Treaties codifies international practice as follows: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

6.2 Subsidiarily, the State party argues that it is clear from the communication that the author, far from exhausting the remedies available to him, did not even try to use any of the mechanisms set up by the Evian agreements (Declaration of Principles concerning Economic and Financial Cooperation, articles 12[54] and 13) or the remedies available through Algerian

---

[53] Communication No. 4/1977, *William Torres Ramírez v. Uruguay*, Views adopted on 23 July 1980, para. 9.

[54] "Algeria shall ensure without any discrimination the free and peaceful enjoyment of patrimonial rights acquired on its territory before self-determination. No one will be deprived of these rights without fair compensation previously determined." (Title IV - Guarantee of acquired rights and previous commitments, United Nations, *Treaty Series*, vol. 507, No. 7395, p. 63.)

administrative agencies and courts. The author left Algeria of his own free will, based on an assessment of the situation that, in the event, proved to be wrong. Many other French nationals made the choice to remain and found that no measures were taken against them by the Algerian authorities and that they were allowed to enjoy quiet possession of their property. Those that abandoned their property left it uncared for, creating a situation dangerous to public order. That being the case, the Algerian authorities were obliged to find solutions. Moreover, the author has not submitted any document or evidence demonstrating that he has exercised the remedies made available in Algeria since 1962. According to rule 76 [now rule 78] of the rules of procedure of the Committee, the author must show that all domestic remedies have been exhausted in order for a communication to be considered. He cannot simply affirm that they are sure to be unsuccessful, ineffective and useless, a statement that demonstrates, moreover, an unjustified prejudice against the Algerian system of justice. The State party has never disputed the author's right to bring his case before its courts. Algerian law allows for that possibility, and the Constitution provides for the independence of the judiciary, which in a good many cases has ordered the Algerian State to pay compensation or to annul its acts when they have been judged to be contrary to international conventions or to domestic law. For the above reasons, the communication is inadmissible.

7. In his letter of 15 June 2006, counsel for the author argues that the State party has not responded to his comments with relevant arguments. In its initial observations, the State party took the view that the author should apply to the authorities of his own country, whereas it now says that the author could have recourse to the Algerian courts, without indicating which tribunals, which rights and which jurisprudence would apply. As to the reference to the author's "voluntary" departure from Algeria and the claim that French nationals who remained in Algeria continued to enjoy quiet possession of their property, counsel notes that the State party has adduced no evidence in support of its view of the facts. Lastly, counsel points out that the State party has not replied in detail to his arguments concerning the exhaustion of domestic remedies or the continued violation of the Covenant. With regard to the continued violation, the distinction between a non-recurring illicit act with continuing effects and a continuing illicit act requires a subtle analysis of the facts and the law. The deciding body will have jurisdiction if the dispute between the parties (claims and responses) arises after entry into force, even if the disputed facts or the situation that led to the dispute are of an earlier date. If, however, the reason for the claim (or the source of the dispute) is a set of facts (subject matter) subsequent to the critical date, the deciding body will have jurisdiction even if the illicit nature of the acts lies in the modification of or failure to maintain a situation created earlier. The effect of temporal conditions therefore necessitates a close study of the facts and the law, and the question should be joined to the examination of the merits.

Issues and proceedings before the Committee

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

8.2 The Committee notes the author's complaint relating to the status of his family's property in 1962 and observes that, irrespective of the fact that those events occurred prior to the entry into force of the Optional Protocol for the State party, the right to property is not protected under the Covenant. Any allegation concerning a violation of the author's right to property per se is thus inadmissible *ratione materiae* under article 3 of the Optional Protocol.[55]

8.3 The author claims that the violations of his rights under articles 1, 12, 17 and 27; articles 2, paragraph 1, and 26, separately or in combination; articles 26 and 17 in combination; and article 5 continued after the entry into force of the Optional Protocol for the State party on 12 December 1989. The State party argues that all the author's claims are inadmissible *ratione temporis*. The Committee considers that it is precluded from examining violations of the provisions of the Covenant that occurred prior to the entry into force of the Protocol for the State party, unless those violations continued after the entry into force of the Protocol.[56] A continuing violation is to be interpreted as the affirmation, by act or by clear implication, of previous violations by the State party. The measures taken by the State party prior to the entry into force of the Optional Protocol for the State party must continue to produce effects which, in themselves, would constitute a violation of any of the rights established in the articles invoked subsequent to the Protocol's entry into force.[57] In the present case the Committee notes that the State party has adopted certain laws since the entry into force of the Covenant and the Protocol regarding the restitution of certain property to persons of Algerian nationality. However, the author has not shown that these laws apply to him, since they concern only persons "whose land has been nationalized or who have given their land as a gift under Ordinance No. 71-73 of 8 November 1971" (see paragraph 2.2).[58] The only remaining issue, which might arise under article 17, is whether there are continuing effects by virtue of the State party's failure to compensate the author for the confiscation of his property. The Committee recalls that the mere fact that the author has still not received compensation since the entry into force of the Optional Protocol does not constitute an affirmation of a prior violation.[59] The claims are therefore inadmissible *ratione temporis*, under article 1 of the Optional Protocol.

---

[55] See communication No. 566/1993, *I.S. v. Hungary*, Views adopted on 23 July 1996, para. 6.1, and communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, para. 4.3.

[56] In accordance with its consistent jurisprudence; see communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, para. 4.5, and communication No. 310/1988, *M.T. v. Spain*, decision on admissibility adopted on 11 April 1991, para. 5.2.

[57] See communication No. 566/1993, *I.S. v. Hungary*, Views adopted on 23 July 1996, para. 6.1.

[58] See article 3, Ordinance No. 95-26 of 30 Rabi' al-thani 1416, corresponding to 25 September 1995, amending and supplementing Act No. 90-25 of 18 November 1990 concerning land planning, with reference to Ordinance No. 62-20 of 24 August 1962.

[59] See communication No. 520/1992, *E. and A.K. v. Hungary*, decision on admissibility adopted on 7 April 1994, para. 6.6.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 1 of the Optional Protocol and article 93, paragraph 3, of the rules of procedure;

(b) That this decision shall be communicated to the State party and to the author, for their information.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Concurring opinion of Committee members Ms. Elisabeth Palm, Sir Nigel Rodley and Mr. Nisuke Ando

Although we are in agreement with the majority's findings in paragraphs 8.2 and 8.3 we are of the opinion that the communication should have been declared inadmissible for abuse of the right of petition and that paragraphs 8.2 and 8.3 should have been replaced by a new paragraph 8.2 drafted as follows:

> 8.2 The Committee notes the delay of 15 years in this case between the ratification of the Optional Protocol by the State party in 1989 and the submission of the communication in 2004. It observes that there are no explicit time limits for submission of communications under the Optional Protocol. However, in certain circumstances, the Committee is entitled to expect a reasonable explanation justifying such a delay. In the present case, the Committee notes counsel's various arguments which, in his view, explain why the author was forced to wait until 2004 to submit the communication to the Committee (see paragraph 3.7). With regard to the argument that the State party only ratified the Covenant and the Optional Protocol in 1989, this does not explain why the author did not begin proceedings in the State party at that stage. The Committee notes counsel's arguments relating to the proceedings lodged by other persons in France and before the European Court of Human Rights, which were concluded by inadmissibility decisions in 2001 before the European Court. However, nothing indicates that the author himself lodged any such proceedings in France or before the European Court. The Committee also notes that the author received compensation from France in 1977, 1980 and 1988,[60] and that it is only after becoming aware of bill No. 1499 of 10 March 2004,[61] in France which did not include a reparation mechanism to ensure further compensation for property confiscated in Algeria, that the author decided to file against the State party, not before its domestic courts and administrative agencies, but directly before the Committee. The Committee is of the view that the author could have had recourse against the State party once the latter had acceded to the Covenant and the Optional Protocol, and that the proceedings in France did not prevent him from instituting proceedings against Algeria before the Committee. No convincing explanation has been provided by the author to justify the decision to wait until 2004 in order to submit his

[60] Act No. 87-549 of 16 July 1987, which aimed at a final settlement of all cases of lost or confiscated overseas property.

[61] Act No. 2005-158, on national recognition of, and payment to, repatriated French nationals, was adopted on 23 February 2005. Its two main objectives relate to those repatriated and to harkis. As to those persons repatriated, the law aims to repay the amounts which had been deducted from compensation paid in the 1970s to them, and which related to resettlement loans. These loans had been granted to those who wished to start businesses in France. As to the harkis, the law provides for an *allocation de reconnaissance* (gratitude payments).

communication to the Committee. The Committee considers that submitting the communication after such a delay without a reasonable explanation amounts to an abuse of the right of submission and finds the communication inadmissible under article 3 of the Optional Protocol.[62]

Finally we want to point out that this communication can be seen as a pilot case as the Committee has received more than 600 similar communications. It is therefore of a special interest to decide on what ground the communication should be declared inadmissible.

(*Signed*): Ms. Elisabeth Palm
(*Signed*): Sir Nigel Rodley
(*Signed*): Mr. Nisuke Ando

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

[62] See communication No. 787/1997, *Gobin v. Mauritius*, decision on admissibility adopted on 16 July 2001, para. 6.3, and communication No. 1434/2005, *Fillacier v. France*, decision on admissibility adopted on 27 March 2006, para. 4.3.

Dissenting opinion of Committee member Ms. Ruth Wedgwood

The author raises a number of claims concerning property that he argues was taken without compensation in the course of his departure from Algeria. In its prior case law, the Human Rights Committee has concluded that the right to property, and the right to prompt, adequate, and effective compensation for any expropriation of property, is not protected as such by the International Covenant on Civil and Political Rights.[63] Nonetheless, under the Committee's case law, unwarranted discrimination in a seizure of property or in the provision of compensation may violate article 26 of the Covenant.[64] The Human Rights Committee has held, in a notable series of cases, that a State "responsible for the departure" of its citizens, cannot later rely upon the absence of national residency or citizenship as an adequate reason to exclude an affected claimant from a provision for restitution.[65]

On 25 September 1995, the State party in this case adopted a statute to provide restitution to persons "whose land has been nationalized", so long as they are of Algerian nationality (see decision of the Committee, para. 8.3). The author in this case has stated that he was deprived of 12 apartments and 10 business premises after his flight from Algeria. It would appear that these apartments were built on his land. The author also states that he also owned "several lots" in the town of Oran (see decision of the Committee, paras. 2.1 and 2.2). The State party has not disputed these factual claims. Nor has the State party explained how declaring properties to be "vacant" (while rejecting requests for restitution) in order to facilitate their resale is any different in effect or intention from nationalization.

Thus, there would appear to be a possible claim of discrimination in regard to the State party's statutory scheme for restitution, adopted *after* the State party joined the Covenant and the Optional Protocol. In addition, in at least one case, the Committee has deemed the inability to resume a protected residence by virtue of a government act to have a continuing effect after the date of its adoption.[66]

---

[63] See communications Nos. 520/1992, *E. and A.K. v. Hungary*, para. 6.6, and 275/1988, *S.E. v. Argentina*.

[64] See communications Nos. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995; 586/1994, *Adam v. Czech Republic*; 857/1999 *Blazek et al. v. Czech Republic*; and 747/1997 *Des Four Walderode v. Czech Republic*.

[65] See communication No. 516/1992, *Simunek v. Czech Republic*, Views adopted on 19 July 1995, para. 11.6.

[66] See communication No. 24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981, para. 13.1.

It is certainly true that situations of historical transition can present real difficulties in addressing individual claims of right. The State party also has faced parlous circumstances in the intervening years. But we ought to address the issues forthrightly, rather than retreating to an admissibility finding based on *ratione temporis* that does not sit comfortably with the rest of our case law.

(*Signed*): Ruth Wedgwood

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
